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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,904	06/04/2004	Brad R. Graham	71575-0003	8744
20915	7590	10/13/2006	EXAMINER	
MCGARRY BAIR PC 171 MONROE AVENUE, N.W. SUITE 600 GRAND RAPIDS, MI 49503			CHAPMAN, JEANETTE E	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/709,904		GRAHAM ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Chapman E. Jeanette		3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2,7,11-12-13, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Knoebl (4461128). Knoebl discloses a drip edge and fascia system comprising:

- A drip edge 37 mounted on the roof ; the drip edge has a face 40/76 that covers a portion of the cover
- A fascia cover mounting bracket 54 adapted to be mounted to an adjacent fascia board 28
- A fascia cover 74 adapted to be mounted to the bracket in a manner to be independently moveable relative to the bracket whereby the cover will not buckle with thermal changes as much as that of the present invention including the same limitations
- The system is made of vinyl
- The cover is mountable to the bracket by a snap fit ; see figures 4-5

Claims 1,3, 5, 7, 10, 12, 13, 16, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by. Price (3332180) discloses a drip edge and fascia system comprising:

- A drip edge 32 mounted on a roof 30
- A fascia cover mounting bracket 6 mounted on a fascia board 20

- A fascia cover is flush against the bracket in a manner to be independently moveable relative to the bracket
- The cover will not buckle with thermal changes
- The drip edge and cover are formed of metal
- The drip edge comprises a flexible mounting flange 32 and a frontal piece above the flange; see figure 5
- The flange 32 is mounted to a roof and the frontal piece is rigid enough to resist deflection under force; see column 3 lines 12-25
- The frontal piece and the mounting flange has the same thickness
- The drip edge 32 has a face that covers a portion of the cover when the system is mounted to the structure
- The drip edge mounting bracket 8 mounted to the roof and the drip edge is mountable to the bracket in a manner to be independently moveable relative to the bracket

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 6, 15, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knoebl (4461128) or Price (3332180).

Regarding the material of construction. Price discloses a decorative frontal piece. The manner in which one decorates has been considered a matter of choice and dependent on the aesthetic appeal and the choice of one making and using the device. Such a choice does not effect the overall function of the device. Also, one of ordinary skill in the art would have appreciated using any material known in the art to create the desired function and purpose of the drip and fascia system. Metal can be made to be resilient/deflectable, elastic or rigid.

Claims 8-9 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knoebl or Price as applied to claims 5 and 16 and further in view of Rapp (6182933). Rapp discloses a decorative trim and fascia system wherein the frontal piece 12/14 and mounting flange 20 have a thickness in the range of .8mm to 1.5mm meeting the recited range of .8 to 1.3 mm. In view of the above, it would have been obvious to form the parts of any dimension enabling the intended function. Nevertheless, Rapp shows the recited dimensions to make the parts rigid enough to resist deflection.

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-20 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-16 and 18-30 of copending Application No. 10/904,679. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JEANETTE E. CHAPMAN  
PRIMARY PATENT EXAMINER  
ART UNIT 3635